IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3916 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJESH @ CHINO @ MARKAND PANDETHR'BROTHER-SANJAY
Versus
COMMISSIONER OF POLICE AHMEABAD AND OTHERS

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Appearance :
MR ANIL S DAVE for the petitioner
MR ND GOHIL, ASST. GOVERNMENT PLEADER for the respondent

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/06/2006

ORAL JUDGMENT

This petition is filed by the brother of the detenu. By filing this petition, the petitioner has challenged the detention order of the detenu

dated 28-12-2005, by which the detenu is detained as a "bootlegger" under Gujarat Prevention of Anti Social Activities Act [hereinafter referred to as PASA Act]. With the detention order, the detenu is also served with the grounds of detention. In the grounds of detention, there is a reference to five cases pending against the detenu. All these cases are registered in connection with theft of certain articles and in connection with theft cases. It is alleged that the detenu is involved in various offences of the Indian Penal Code as well as under Arms Act.

Ms.Bharti Rana, learned advocate for the petitioner submitted that at the time of passing the detention order the petitioner was already in judicial custody and even though the petitioner is not involved in serious type of cases, yet, the police Police Commissioner has come to the conclusion that the activities of the detenu are prejudicial to public order or even tempo of public life is disturbed by his activities. It is submitted that at the most it can be said that the detenu has violated law and order and not public order. To substantiate her say, learned advocate for the petitioner has relied upon the decision of the Supreme Court in **Darpan Kumar Sharma alias Dharban Kumar Sharma V. State of Tamil Nadu and Others**, reported in **AIR 2003 SUPREME COURT 971**, wherein it is held as under in paragraph 6 :

> "In the present case, the three alleged incidents to which the Commissioner of Police has referred to, are thefts arising under Section 379, IPC and, therefore, there is only a solitary instance wherein the detenu is alleged to have robbed in a public place one Kumar. Therefore, there is no material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality. Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of

> alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order. This ground is enough to quash the order of detention made by the respondents."

Learned advocate for the petitioner also submitted that at the time when order of detention was passed against the detenu, he was already in judicial custody and the detaining authority has not pointed out as to on what basis it has come to the conclusion that the detenu will be released on bail on presentation of bail application.

Mr.N.D.Gohil, learned AGP is also not in a position to substantiate his say that the activities of the detenu are prejudicial to public health or that he has violated public order.

However, the detaining authority has not stated as to on what basis it has come to the conclusion that the detenu will be released on bail on presentation of bail application even though he is charged for serious offences under the Indian Penal Code. The observation of the detaining authority is routine in nature. Moreover, at the most it can be said that the detenu has violated law and order, and it cannot be said that the detenu has violated public order. Therefore, the order of detention is required to be quashed.

At this stage, learned advocate for the petitioner submitted that in case the detenu is released on bail in connection with the offences for

which he is charged, the petitioner will not enter Ahmedabad City limits till 31st October 2006 except for attending the criminal cases. This voluntary statement of the learned advocate for the petitioner is recorded. It is for the authorities to monitor the same if at all the petitioner is released on bail.

In the result, the petition is allowed. The impugned order of detention dated 28.12.2005 passed by the Commissioner of Police, Ahmedabad City is set aside. The detenu – Rajesh @ Chino @ Markand Pandey, son of Ratanbahadur Rokay (Nepali) is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct Service is permitted.

(P.B.MAJMUDAR, J.)

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